

January 18, 2001

D.T.E. 00-22-12

Complaint filed by Marilyn Saulnier, pursuant to G.L. c. 93, § 108 et seq., with the Department of Telecommunications and Energy for a finding that her long distance telephone service was switched to Sprint Communications Company LP without authorization.

APPEARANCES: Marilyn Saulnier

64 Willard Street, Apt. 209

Quincy, Massachusetts 02169

Complainant

Christopher D. Moore, Esq.

Sprint Communications Company LP

401 9th Street, N.W., Suite 400

Washington, D.C. 20002

Respondent

I. INTRODUCTION

On October 16, 2000, Marilyn Saulnier ("Complainant"), pursuant to G.L. c. 93,

§ 108 et seq., notified the Department of Telecommunications and Energy ("Department") that Sprint Communications Company LP ("Sprint" or "Company") had switched her intra-LATA long distance telecommunications service from AT&T without authorization.⁽¹⁾

On January 3, 2001, pursuant to notice duly issued, the Department conducted an evidentiary hearing. At the hearing, the Complainant testified on her own behalf and submitted telephone bills into evidence. The Company submitted two written exhibits and declined to offer any testimony of its own in the proceeding.

II. POSITIONS OF THE PARTIES

A. Complainant

The Complainant stated that she has been a customer of AT&T since her telephone lines were installed in 1998 (Tr. at 13, 26). The Complainant testified that her dispute involves two telephone lines and separate billings for each line (Consumer Exhs. 1A and 1B; Tr. at 26). The Complainant further testified that she first realized that her long distance service had been switched when she received her September 2000 bills and noticed charges from Sprint effective mid-August (Consumer Exhs. 1A and 1B; Tr. at 14, 26-27). The Complainant unequivocally denied that she authorized anyone to change her intra-LATA long distance service from AT&T to Sprint accounts (Tr. at 29). The Complainant acknowledged that she has received credits and refunds from Verizon and Sprint such that no outstanding restitution for alleged overcharges is required (*id.* at 16, 20-22, 26, 29). The Complainant also acknowledged that she has been restored to the long distance carrier of her choice (*id.* at 29-30).

B. Sprint Communications

At the commencement of the evidentiary proceeding Sprint made a Motion to Continue the Hearing and Join Verizon and 360 Communications as parties to this proceeding ("Motion").⁽²⁾ This Motion was based on Sprint's contention that the Complainant's account was switched on an order from either one of these companies (*id.* at 6). Sprint argued that inclusion of these parties in the proceeding would enable Sprint to serve discovery and possibly prove that the change was initiated not by Sprint but by Verizon or 360 Communications (*id.* at 7, 9-10). Sprint acknowledged that records ordering the switch of Complainant's telephone service might not exist (*id.* at 7). Sprint further acknowledged that it did not attempt to contact either Verizon or 360 Communications to ascertain the existence of the information it was seeking (*id.* at 10-12). The Hearing Officer denied the Company's Motion in a bench ruling citing: (1) the absence of any Company showing of relevance or reference in the underlying bills to the parties to be joined in this proceeding and (2) the failure of Sprint to make any effort to contact the Hearing Officer, Verizon or 360 Communications regarding its quest for documentation prior to the hearing (*id.* at 9-12, 43-44).

Sprint declined to offer any testimony in this proceeding (*id.* at 33). The Company did conduct cross examination of the Complainant and offered two documents into evidence in support of its contention that Sprint was not responsible for an unauthorized switch of the Complainant's telephone service. Sprint Exhibit 1 is a letter dated November 30, 2000 from Sprint to the Complainant and Sprint Exhibit 2 is a Sprint printout from its internal computer system containing notation entries pertaining to investigation of this complaint by Sprint staff. The first exhibit states that Complainant's telephone lines were switched to 360 Communications on June 11, 2000. The second exhibit contains Company entries referring to the Complainant's account that state "PER LEC CUST DIDNT (sic) AUTH SERV. THIS IS NOT A SPRINT SLAM. LEC INITIATED ORDER. LEC ISSUED A DJ DEBIT BACK TO SPRINT ACCN.L FREEMAN 8008777440" and "THEN ANIS BILLED CASUAL AND WE SENT BNA REQUEST TO LEC AND THEY VERIFIED CUST ON SPRINT SO WE INSTALLED ANI ON THIS ACCT AS THERE HAD BEEN CASUAL USAGE WHICH DEFAULTED TO THE SPRINT NETWORK DUE TO FALLING OFF THE RE-SELLER. NOT A SPRINT SLAM" (Exh. Sprint 2).

II. STANDARD OF REVIEW

Pursuant to G.L. c. 93, § 109(a), a change in a customer's primary interexchange carrier ("IXC") shall be considered to have been authorized only if the IXC or local exchange carrier ("LEC") that initiated that change provides confirmation that the customer did authorize such change either through a signed Letter of Authorization ("LOA") or oral confirmation of authorization through Third Party Verification ("TPV") obtained by a company registered with the Department to provide TPV services in the Commonwealth. G.L. c. 93 § 109 (b) defines an LOA as a separate document that provides for an authorization to initiate a primary IXC or LEC change.

Massachusetts law provides that for an LOA to be valid, among other things, it (1) must contain the signature and billing address of someone authorized to change the telephone provider, (2) shall not be combined with inducements of any kind on the same document, and (3) shall be printed in 12 point type and contain clear and unambiguous language that confirms the customer's decision to change the primary IXC. Massachusetts law provides that for a TPV to be valid, it must: (1) identify the person that received the telemarketing call; (2) delineate the authority of that person to approve a change in the IXC or LEC for a particular telephone line; and (3) identify the new IXC or LEC.

Pursuant to G.L. c. 93, § 110 (i), the Department shall hold a hearing to determine, based on our review of the LOA or TPV and any other information relevant to the change in telephone service, whether the customer did authorize the carrier change.

IV. ANALYSIS AND FINDINGS

In accordance with G.L. c. 93, § 110(i), once the Complainant notified the Department of her intent to challenge the existence of or validity of an LOA or TPV, a hearing was conducted to determine whether the change in the Complainant's intra-LATA long distance carrier was authorized. The Complainant's statements that she never authorized any change(s) to her long distance carrier were unequivocal. The telephone bills submitted by the Complainant clearly indicate Sprint as the new long distance carrier and do not anywhere reference Verizon or 360 Communications. The Company did not challenge the Complainant's testimony that she never authorized a switch in carrier. The Company failed to produce an LOA or TPV but chose instead to rely solely on two internal exhibits prepared by its personnel subsequent to the filing of the Complainant's complaint with the Department. The exhibits contain conclusory statements that this was not a Sprint slam; however, the absence of any individual from Sprint authorized to authenticate or submit to cross examination on these documents renders them self-serving and unpersuasive. Thus, the Department finds that the switch of Complainant's long distance service from AT&T to Sprint was not legally authorized and violated G.L. c. 93, § 109(a).⁽³⁾

The Department notes that Sprint has waived or reimbursed all charges to the Complainant for the switch in service and restored her service to AT&T. The Department directs Sprint to refund to Complainant's previous long distance carrier all revenues it would have received from the Complainant had the switch not taken place.

This is the second instance in which Sprint Communications has been determined by the Department to have switched any customer's IXC or LEC without proper authorization.⁽⁴⁾ Pursuant to G.L. c. 93, § 112 (b) an IXC or LEC determined by the Department to have switched any customer's IXC or LEC without proper authorization more than once in a 12 month period, shall be subject to a civil penalty not to exceed \$1,000 for the first offense and not less than \$2,000 for any subsequent offense. Accordingly, Sprint Communications is directed to remit a civil penalty of \$1,000 to the Department within ten (10) days of receipt of this Order.

V. ORDER

Accordingly, after notice, hearing, consideration, and determination that Sprint Communications Company LP switched Marilyn Saulnier's long distance and regional telephone service provider without authorization in violation of the provisions of

G.L. c. 93, § 109 (a) and (b)(2), it is hereby

ORDERED: That Sprint Communication Company LP shall comply with the directives contained in this order; and it is

FURTHER ORDERED: That Sprint Communications Company LP shall submit to the Department within ten (10) business days of the issuance of this order, an accounting of refunds made to the Complainant's previous interexchange carrier.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the

Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. Such practices are commonly referred to as "slamming".
2. 360 Communications purchases bulk amounts of Sprint's long distance service and resells that service to individuals at its own rates (Exh. Sprint 1).
3. An IXC determined by the Department to have intentionally, maliciously or fraudulently switched the service of more than 20 customers in a 12-month period, may be prohibited from selling telecommunications services in the Commonwealth for a period of up to one year. G.L. c. 93, § 112(b).
4. See Marcia MacMillan v. Sprint Communications Company, D.T.E. 00-22-3 (June 1, 2000).

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